IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 903 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT
Versus
RAMESHBHAI S PATANWADIA

Appearance:
1. Criminal Appeal No. 903 of 1986
MR SUDHASHU S PATEL, APP for Appellant
MR DN PANDYA for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 18/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 378 of the

Code of Criminal Procedure, 1973 ("the Code" for short) is directed against judgment dated May 31, 1986 rendered by the learned Extra Additional Sessions Judge, Bharuch, by which the respondent, who was original accused No.1, has been acquitted of the offences punishable under Sections 302, 504 read with Section 114 of the Indian Penal Code, but convicted of the offence punishable under Section 304 Part II of Indian Penal Code, and sentenced to suffer R.I. for five years and fine of Rs.200=00, in default S.I. for six months.

2. Kamlaben Motibhai, who is original complainant in the case, is resident of village Kolvana, Taluka Amod, District Bharuch. She is doing agricultural work. The incident in question had taken place on September 17, 1985. On the day of incident, she had gone out of her house for the purpose of answering the call of nature whereas servant employed by her named Manilal Chhaganlal was removing mud collected near the road. Manilal had placed a pot containing water by the side of road. At that time, the respondent and his father, Sursangbhai Kabhai, were coming from the side of village on a cart. The cart had collided with the water-pot as a result of which, it was broken. Thereupon, Manilal had made grievance as to why his water-pot was broken and an altercation had taken place with Sursangbhai, i.e. father of the respondent. It is the case of the prosecution that the respondent had started hurling abuses, and asked Manilal to leave the place. Manilal was also administered threat that failure on his part to leave the place would result into his killing with the help of ada of the cart. Meanwhile Dolatsing, who was husband of the complainant, had arrived at the place of the incident on cycle from the village. On noticing that an altercation was going on between Manilal and the respondent, he had alighted from the cycle. He was informed by the complainant that the water-pot belonging to Manilal was broken by the respondent and his father and they were threatening to beat. Thereupon, Dolatsing had gone near the respondent and his father to scold them. At that time, the respondent had taken out ada of the cart and given a blow on the head of the deceased. On receiving the said blow, the deceased had fallen down and, thereafter, another blow with the said ada was delivered by the respondent on the head of the deceased. On assault being mounted on the deceased, the complainant had raised shouts as a result of which, persons who were nearby, had collected at the place of incident. Thereupon the respondent and his father had fled away. The complainant had lodged her complaint against the respondent and his father at Amod Police Station and

injured Dolatsing was removed to Amod Hospital for treatment. At Amod Hospital, it was found that it was necessary to remove the deceased to Bharuch Civil Hospital for better treatment. However, he was admitted in S.S.G. Hospital, Vadodara, for further treatment. During the course of treatment, the deceased succumbed to his injuries. The complaint filed by Kamlaben was investigated by PSI Mr.Waghela of Amod Police Station. During the course of investigation, panchnama of place of occurrence was drawn and incriminating articles were seized. Meanwhile, Sursang, who is father of the respondent, had also lodged his complaint against the deceased which was registered as NC Complaint. Thereafter, the respondent and his father were arrested. While they were in Police Custody, ada which was used for commission of offence was recovered pursuant to information given by the respondent. Incriminating articles which were seized were sent to Forensic Science Laboratory for analysis and report of analysis was obtained. On conclusion of investigation, the respondent and his father were chargesheeted of the offences punishable under Sections 302, 504 read with 114 IPC in the Court of learned Judicial Magistrate First Class, Jambusar. As the offence punishable under Section 302 IPC is exclusively triable by a Court of Sessions, the case was committed to the Sessions Court, Bharuch, for trial where it was numbered as Sessions Case No.9 of 1986.

3. The learned Extra Additional Sessions Judge, Bharuch, to whom the case was made over for trial had framed charge at Exh.4 against the respondent and his father of the offences punishable under Sections 302, 504, 114 IPC. The charge was read over and explained to the respondent and his father, who pleaded not guilty to the same and claimed to be tried. The prosecution had, therefore, examined: (1) Dr.Suttapa Basu, P.W.-1 at Exh.7; (2) Ishaksinh Gulabsinh, P.W.-2 at Exh.9; (3) Kamlaben Motibhai, P.W.-3 at Exh.11; (4) Manilal Chhagan, P.W.-4 at Exh.13; (5) Ismailbhai Ibrahim Musa, P.W.-5 at Exh.14; (6) Ayub Ahmed Musa, P.W.-6 at Exh.15; (7) Vithal Ganpat, P.W.-7 at Exh.17; (8) Chandravadan Hiralal Patel, P.W.-8 at Exh.27; and, (9) Udesinh Motisinh Waghela, P.W.-9 at Exh.30, to prove its case against the respondent and his father. The prosecution had also produced documentary evidence such as postmortem notes at Exh.8, map of place of occurrence at Exh.10, complaint lodged by Kamlaben at Exh.12, panchnama indicating recovery of ada pursuant to information given by the respondent at Exh.16, panchnama place of occurrence at Exh.20, inquest report at Exh.21, report of Forensic

Science Laboratory, certificate of injury of Sursang i.e. father of the respondent at Exh.29, complaint of Sursang at Exh.31, etc. in support of its case against the respondent and his father.

4. After recording of evidence of prosecution witnesses was over, the learned Judge had explained to the respondent and his father the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statements as required under Section 313 of the Code. In their further statements, the case of the respondent and his father was that as the water-pot, which was placed on road, was broken, Manilal Chhagan, had started abusing them and they were proceedings towards the place of their destination, but the deceased, who had come on cycle, had chased them and climbed on the cart where a scuffle had taken place in which the deceased had fallen on axle of wheel of the cart and sustained injuries, but they were innocent. However, neither the respondent nor his father had examined any witness in support of the defence pleaded in further statements.

5. On appreciation of evidence, the learned Judge found that it was proved by the prosecution beyond reasonable doubt that the deceased had met a homicidal death. According to the learned Judge, it was also proved by the prosecution that two blows of ada were given by the respondent on the head of the deceased, but before blows were given, a scuffle had taken place between the deceased and the respondent and, therefore, it was difficult to attribute to the respondent intention to commit murder of the deceased. According to the learned Judge, the act of delivering ada blows was done with the knowledge that it was likely to cause death but without any intention to cause death and, therefore, the respondent was liable to be convicted of the offence punishable under Section 304 Part II IPC. It was further found by the learned Judge that father of the respondent had not committed any offence as alleged by the prosecution. In view of the abovereferredto conclusions, the learned Judge has acquitted the respondent and his father of the offences punishable under Sections 302, 504 read with 114 IPC, but convicted the respondent of the offence punishable under Section 304 Part II IPC and sentenced him to suffer R.I. for five years and fine of Rs.200=00, in default S.I. for six months, by judgment dated May 31, 1986, giving rise to instant acquittal appeal.

6. It may be stated that original complainant,

Kamlaben Motilal, had filed Criminal Revision Application No.379 of 1986 challenging acquittal of the respondent and his father of the offences punishable under Sections 302, 504 read with 114 IPC and also prayed, in the alternative, that punishment imposed on the respondent for the offence punishable under Section 304 Part II IPC should be enhanced having regard to the facts and circumstances of the case. However, as the State Government has filed instant appeal under Section 378 of the Code challenging acquittal of the respondent of the offence under Section 302, the said Revision was disposed of by the Court. It is further relevant to notice that the acquittal of the father of the respondent is not challenged by the State Government at all nor the respondent has challenged his conviction recorded under Section 304 Part II IPC, and as informed by the learned counsel of the respondent to the Court, the respondent has already undergone the sentence imposed on him for commission of offence punishable under Section 304 Part II IPC.

7. Mr.Sudhanshu S.Patel, learned Additional Public Prosecutor for the State, and Mr.A.J.Patel, learned Senior Counsel appearing for the original complainant, contended that the two blows with ada, which is lethal weapon, were delivered by the respondent on the vital part of body of the deceased, namely, his head and, therefore, the respondent should have been convicted of the offence punishable under Section 302 IPC. According to the learned counsels, after delivery of first blow on head, the deceased had fallen down, but thereafter also, another blow on the head was given by the respondent to the deceased and in view of this fact, it should have been held that the intention of the respondent was to cause murder of the deceased. What was maintained by the learned counsel was that in view of the specific medical evidence to the effect that injuries sustained by the deceased on his head were sufficient in the ordinary course of nature to cause his death, the respondent should have been convicted of the offence punishable under Section 302 IPC and, therefore, the appeal should be accepted.

8. Mr.Devarshi N.Pandya, learned counsel of the respondent, pleaded that the contents of injury certificate of father of the respondent produced at Exh.29 as well as the complaint lodged by father of the respondent produced at Exh.31, would indicate that the incident had preceded by an altercation as well as scuffle, and as the prosecution had suppressed material facts, the prosecution case that the respondent had

committed offence punishable under Section 302 IPC is rightly disbelieved by the learned Judge of the trial Court. According to the learned counsel of the respondent, injury certificate of the father of the respondent would indicate that he was assaulted by the deceased and, therefore, the respondent, who is his son, had given blows with ada to the deceased and, therefore, it is difficult to cull out the intention to commit murder of the deceased on the part of the respondent. What was stressed was that the defence pleaded by the respondent in his further statement recorded under Section 313 of the Code stands probablised by certificate of injury of his father as well as the contents of the complaint lodged by father of the respondent and, therefore, the appeal should be dismissed. It was asserted that the view taken by the learned Judge cannot be regarded as unreasonable or perverse and that no ground is made out by the learned counsels of the State Government as well as original complainant to interfere with the findings recorded by the learned Judge.

9. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

10. The fact that the deceased had died a homicidal death stands amply proved by the testimony of Dr.Suttapa Basu, P.W.-1, Exh.7. The injuries sustained by the deceased were also noted in the inquest held on the dead body, which is on record of the case at Exh.21. Further, as per the doctor, cause of death of deceased was due to subarachnoid subdural haemorrhage. The fact that the deceased had received injuries at the hands of the respondent is also stated by the complainant. Under the circumstances, the finding that the deceased had died a homicidal death is found to be eminently just, and is hereby confirmed.

11. The fact that the respondent had delivered two blows with ada on the head of the deceased also stands amply proved by reliable, cogent and consistent evidence of Kamlaben Motilal, who is wife of the deceased, as well as Manilal Chhagan, who was servant of the deceased. The learned Judge of the trial Court has recorded a finding that it was proved by the prosecution that the respondent had delivered two blows with ada on the head of the deceased. The said finding is not challenged by the respondent by filing an appeal against his conviction recorded under Section 304 Part II IPC nor it is challenged in instant appeal. Therefore, the said

finding is hereby upheld. However, there is no manner of doubt that during the course of incident, Sursang, i.e. accused No.2 and father of the respondent, had received visible injury. The said injury is minor and the prosecution case is not liable to be thrown overboard on the ground of non explanation of injury sustained by one of the accused. However, the fact remains that the contents of certificate of injury of Sursang read with his complaint produced at Exh.31 would indicate that genesis of the incident is suppressed by the prosecution. A close scrutiny of the evidence of witness Manilal would indicate that an altercation had taken place between the deceased and the respondent before the blows were given by the respondent by means of ada on the head of the deceased. The record also indicates that the deceased had assaulted the acquitted accused who was father of the respondent. Naturally, therefore, the respondent, who is son of Sursang, had come to his rescue and assaulted the deceased. Neither the respondent nor his father was knowing that the deceased would come to the spot on cycle nor the record shows that there was any enmity between the respondent & his father on one hand and the deceased on other. If the intention of the respondent was to cause murder, he would have armed himself with lethal weapon like knife, spear, etc., but he had used ada, which was easily available as it is being used in the cart. Having regard to the surrounding circumstances attending the incident, this Court is of the opinion that the learned Judge was justified in coming to the conclusion that the respondent had no intention to cause murder of the deceased, but had knowledge that delivering blows with ada on head was likely to cause death, but without any intention to cause death. Therefore, acquittal of the respondent of the offence punishable under Section 302 IPC cannot be regarded as erroneous or illegal so as to warrant interference of this Court in instant appeal. The learned Judge of the trial Court has assigned cogent and convincing reasons for acquitting the respondent of the offence punishable under Section 302 and convicting him under Section 304 Part II IPC, which are to be found in paragraphs 15 to 18 of the impugned judgment with which this Court fully concurs. The learned counsels appearing for State Government and the original complainant have failed to dislodge those grounds and persuade the Court to take a different view of the matter. Under the circumstances, the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails, and is dismissed. Muddamal to be disposed in terms of the directions given by the learned Judge in the impugned

judgment.

(J.M. Panchal, J.)

(D.P. Buch, J.)

Rajendra